

16B C.J.S. Constitutional Law IV XII Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

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Research References

West's Key Number Digest

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16B C.J.S. Constitutional Law § 1134

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Constitutional Law

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1134. Rights of assembly and petition, generally

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1430 to 1438, 1490

The right of free and peaceable assembly for lawful purposes and the right to petition the government for a redress of grievances are fundamental rights guaranteed under the United States Constitution and various state constitutions.

The right of the people peaceably to assembly and the freedom and liberty to hold assemblies for lawful purposes and in a lawful manner without governmental interference or hindrance¹ and the right to petition the government for a redress of grievances,² are guaranteed by the First Amendment of the Federal Constitution. In conjunction with the right of assembly, the right to petition is the enabling clause of the First Amendment as the right to petition safeguards citizens' exercise of their other First Amendment rights.³ The rights of free assembly for lawful purposes and to petition the government for redress of grievances are sacred human liberties,⁴ which are of the very essence of democracy,⁵ and they are the fundamental and inherent rights of the citizens of a republican form of government, rights antedating the adoption of the various constitutions.⁶

The right to freedom of assembly is a fundamental right which may not be submitted to vote, and it does not depend on the outcome of any election.⁷ As a safeguard against aggression, these rights have been incorporated into the First Amendment to the U.S. Constitution and into various state constitutions.⁸ While the First Amendment, like other of the first 10 amendments, is a limitation on Congress only,⁹ nevertheless, the Due Process Clause of the Fourteenth Amendment has been interpreted so as to

protect the right of assembly and of petition from state action as well.¹⁰ However, state constitutional provisions guaranteeing the freedom of petition and assembly are often coextensive with the corresponding federal guarantees.¹¹

Statutes and ordinances which violate the constitutional guaranty of right of assembly and of petition are null and void,¹² and in some circumstances, the guaranty forbids individual or group interference as well as legislative action.¹³ It has been held, however, that neither the First nor the Fourteenth Amendment adds anything to the rights of one citizen as against another or inhibits actions by individuals with respect to their own property.¹⁴

Complete freedom, nonetheless, remains the rule unless and until regulated or restricted on rational grounds relating to the public welfare.¹⁵ Thus, the State cannot control the influence of a public forum by censoring the ideas, the proponents, or the audience and cannot frustrate the purpose of a forum to interchange ideas by a censorship that would label certain convictions and affiliations suspect, denying the privilege of assembly to those who hold them but granting it to those whose convictions and affiliations happen to be acceptable.¹⁶

There is a First Amendment right to peacefully assemble and listen to the speaker of one's choice which may not be impaired by the State any more than the right of the speaker may be impaired.¹⁷ Similarly, state constitutional protections for speech and right to petition the government for redress of grievances are afforded to both the speaker and the listener.¹⁸ However, the freedom to express one's opinion and invite others to assemble to hear those opinions does not contain the right to compel others to listen.¹⁹ Further, the First Amendment and freedom of assembly provisions of state constitutions both ensure citizens the right to petition the government for redress of grievances, but there is no corresponding right that such petition will be acted upon.²⁰

The rights of assembly and of petition are construed liberally²¹ and with respect to the common law.²²

Nature of grievances redressable.

The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones,²³ and the constitutional safeguard may apply to business or economic activity.²⁴ Furthermore, the freedoms of petition and assembly guaranteed by the Constitution are as extensive with respect to local matters as they are to questions of federal concern.²⁵

Particular factors influencing right to petition.

The right to petition does not depend upon the motivation or purpose which initiated the petition,²⁶ the availability of other remedies,²⁷ or the mode or method of petition.²⁸ Similarly, the right to petition may not be curtailed because of some adverse effect which might result to a third party should the petition be successful.²⁹ It is immaterial, as affecting the right of petition, that the subject of the grievance may not be political in the sense of raising a public issue.³⁰

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Footnotes

- 1 U.S.—*Bates v. City of Little Rock*, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); *Matter of McLouth Steel Corp.*, 23 B.R. 167 (Bankr. E.D. Mich. 1982).
Idaho—*Edmondson v. Shearer Lumber Products*, 139 Idaho 172, 75 P.3d 733, 7 A.L.R.6th 841 (2003).
To whom right extended

The right of assembly extends to all irrespective of their race or ideology.

U.S.—*Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

U.S.—*Smith v. Arkansas State Highway Emp., Local 1315*, 441 U.S. 463, 99 S. Ct. 1826, 60 L. Ed. 2d 360 (1979); *Whitehill v. Elkins*, 389 U.S. 54, 88 S. Ct. 184, 19 L. Ed. 2d 228 (1967).

Ariz.—*Ruiz v. Hull*, 191 Ariz. 441, 957 P.2d 984 (1998).

W. Va.—*State v. Thorne*, 175 W. Va. 452, 333 S.E.2d 817 (1985).

Colo.—*Krystkowiak v. W.O. Brisben Companies, Inc.*, 90 P.3d 859 (Colo. 2004).

U.S.—*Stapleton v. Mitchell*, 60 F. Supp. 51 (D. Kan. 1945).

Md.—*Smith v. Higinbotham*, 187 Md. 115, 48 A.2d 754 (1946).

U.S.—*McElroy v. Mitchell*, 326 U.S. 690, 66 S. Ct. 172, 90 L. Ed. 406 (1945); *U.S. v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 (1875); *Stapleton v. Mitchell*, 60 F. Supp. 51 (D. Kan. 1945).

Implied in republican form of government

The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances, and the First Amendment expressly guarantees that right against abridgment by Congress.

Conn.—*State v. Bonilla*, 131 Conn. App. 388, 28 A.3d 1005 (2011).

U.S.—*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943).

U.S.—*Chicago Area Military Project v. City of Chicago*, 508 F.2d 921 (7th Cir. 1975).

Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011) (right to petition).

U.S.—*U.S. v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 (1875); *Chicago Area Military Project v. City of Chicago*, 508 F.2d 921 (7th Cir. 1975).

U.S.—*Hague v. Committee for Indus. Organization*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939); *De Jonge v. State of Oregon*, 299 U.S. 353, 57 S. Ct. 255, 81 L. Ed. 278 (1937).

Colo.—*In re Foster*, 253 P.3d 1244 (Colo. 2011) (right to petition).

N.C.—*Feltman v. City of Wilson*, 767 S.E.2d 615 (N.C. Ct. App. 2014).

Tex.—*Jardin v. Marklund*, 431 S.W.3d 765 (Tex. App. Houston 14th Dist. 2014).

W. Va.—*Baldau v. Jonkers*, 229 W. Va. 1, 725 S.E.2d 170 (2011).

Wis.—*Board of Regents-UW System v. Decker*, 2014 WI 68, 355 Wis. 2d 800, 850 N.W.2d 112, 306 Ed. Law Rep. 1005 (2014).

Mont.—*Montana Auto. Ass'n v. Greely*, 193 Mont. 378, 632 P.2d 300 (1981).

U.S.—*Velez v. Amenta*, 370 F. Supp. 1250 (D. Conn. 1974).

U.S.—*Lloyd Corp., Limited v. Tanner*, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972).

Conn.—*State v. Martin*, 35 Conn. Supp. 555, 398 A.2d 1197 (Super. Ct. Appellate Sess. 1978).

N.J.—*State v. Schmid*, 84 N.J. 535, 423 A.2d 615 (1980).

Mass.—*Bowe v. Secretary of the Com.*, 320 Mass. 230, 69 N.E.2d 115, 167 A.L.R. 1447 (1946).

U.S.—*U.S. v. Crowthers*, 456 F.2d 1074 (4th Cir. 1972); *Gay Lib v. University of Missouri*, 558 F.2d 848, 50 A.L.R. Fed. 496 (8th Cir. 1977).

Cal.—*Danskin v. San Diego Unified School Dist.*, 28 Cal. 2d 536, 171 P.2d 885 (1946).

Approval by police authorities unnecessary

State or municipality cannot require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with discretion in police to say that some ideas may, while others may not, be disseminated.

U.S.—*Cox v. State of La.*, 379 U.S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965).

U.S.—*Snyder v. Board of Trustees of University of Illinois*, 286 F. Supp. 927, 12 Fed. R. Serv. 2d 540 (N.D. Ill. 1968).

Okla.—*In re Initiative Petition No. 366*, 2002 OK 21, 46 P.3d 123 (Okla. 2002).

N.C.—*State v. Smedberg*, 31 N.C. App. 585, 229 S.E.2d 841 (1976).

U.S.—*Gordon v. Heimann*, 514 F. Supp. 659 (N.D. Ga. 1980).

Mont.—*Gehring v. All Members of State 1993 Legislature*, 269 Mont. 373, 889 P.2d 1164 (1995).

U.S.—*U.S. v. Korner*, 56 F. Supp. 242 (S.D. Cal. 1944).

N.J.—*State v. Butterworth*, 104 N.J.L. 579, 142 A. 57, 58 A.L.R. 744 (N.J. Ct. Err. & App. 1928).

- 23 Wis.—*In re Stolen*, 193 Wis. 602, 216 N.W. 127, 55 A.L.R. 1355 (1927).
 U.S.—*United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967); *Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).
 R.I.—*Cove Road Development v. Western Cranston Indus. Park Associates*, 674 A.2d 1234 (R.I. 1996) (not only speech and assembly).
- 24 U.S.—*Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).
 Cal.—*Matossian v. Fahmie*, 101 Cal. App. 3d 128, 161 Cal. Rptr. 532 (1st Dist. 1980).
- 25 U.S.—*United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967).
- 26 U.S.—*Weiss v. Willow Tree Civic Ass'n*, 467 F. Supp. 803 (S.D. N.Y. 1979).
 Cal.—*Matossian v. Fahmie*, 101 Cal. App. 3d 128, 161 Cal. Rptr. 532 (1st Dist. 1980).
 S.D.—*Hobart v. Ferebee*, 2004 SD 138, 692 N.W.2d 509 (S.D. 2004).
- Anticompetitive petitioning**
 It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors.
 S.D.—*Hobart v. Ferebee*, 2004 SD 138, 692 N.W.2d 509 (S.D. 2004).
- 27 N.Y.—*People v. Solkoff*, 53 Misc. 2d 137, 278 N.Y.S.2d 106 (N.Y. City Ct. 1967).
- 28 **Initiative, referendum, and recall**
 U.S.—*Diaz v. Board of County Com'rs of Dade County*, 502 F. Supp. 190 (S.D. Fla. 1980).
- Plebiscite**
 N.D.—*State ex rel. Askew v. Meier*, 231 N.W.2d 821 (N.D. 1975).
- 29 U.S.—*Bradley v. Computer Sciences Corp.*, 643 F.2d 1029 (4th Cir. 1981).
- 30 U.S.—*Stern v. U.S. Gypsum, Inc.*, 547 F.2d 1329 (7th Cir. 1977).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1135. Compared to free speech

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1430, 1435

The principles governing the right of free speech and of assembly and petition are generally the same.

The right of petition is no more sacred than is the right of free speech,¹ and there is no sound basis for granting greater constitutional protection to statements made in a petition than other First Amendment expressions.² The principles governing the right of free speech and of assembly are the same;³ the rights are equally fundamental.⁴ The right to petition and the right to free speech are separate guarantees, and they are related and generally subject to the same constitutional analysis.⁵ Nevertheless, one court has observed that the Petition Clause of the First Amendment is analytically distinct from, although related to, the Free Speech Clause.⁶ These rights, although not identical, are inseparable and are cognate rights.⁷

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Footnotes

- 1 Wis.—*In re Stolen*, 193 Wis. 602, 216 N.W. 127, 55 A.L.R. 1355 (1927).
- 2 U.S.—*McDonald v. Smith*, 472 U.S. 479, 105 S. Ct. 2787, 86 L. Ed. 2d 384, 17 Fed. R. Evid. Serv. 1041 (1985).
- 3 U.S.—*De Jonge v. State of Oregon*, 299 U.S. 353, 57 S. Ct. 255, 81 L. Ed. 278 (1937).

- Utah—*State v. Chima*, 23 Utah 2d 360, 463 P.2d 802 (1970).
- 4 Conn.—*State v. Bonilla*, 131 Conn. App. 388, 28 A.3d 1005 (2011).
- 5 U.S.—*Wayte v. U.S.*, 470 U.S. 598, 105 S. Ct. 1524, 84 L. Ed. 2d 547 (1985).
- Wash.—*Akrie v. Grant*, 178 Wash. App. 506, 315 P.3d 567 (Div. 1 2013), review granted, 180 Wash. 2d 1008, 325 P.3d 913 (2014).
- 6 Cal.—*Yu v. University of La Verne*, 196 Cal. App. 4th 779, 126 Cal. Rptr. 3d 763, 268 Ed. Law Rep. 454 (2d Dist. 2011).
- 7 U.S.—*United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967); *Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1136. Scope of assembly and petition rights

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 1430 to 1438

The rights of assembly and petition secure to every person the right to apply to any department of the government for the redress of grievances, or the bestowal of a right, and also guarantee the enjoyment of such redress or right free from all penalty for having sought or obtained it.

The right of assembly and petition secure to every person, natural or artificial, the right to apply to any department of the government for the redress of grievances, or the bestowal of a right, and also guarantee the enjoyment of such redress or right free from all penalty for having sought it.¹ The constitutional guaranty of assembly is not restricted to the literal right of meeting together to petition the government for a redress of grievances.² Included in the rights of assembly and petition is the right of exercising them in union with others through membership in organizations seeking political or economic change.³ Effective exercise of freedoms of speech and assembly is enhanced by the freedom of group association to advocate different points of view.⁴

Individuals have the right to organize into parties and even into pressure groups to advance causes and to circulate their views and advocate their cause in public assemblies,⁵ and the denial of the use of money for such purposes improperly abridges the right of peaceable assembly.⁶ The First Amendment protects the right to demonstrate, march, or assemble in an orderly and peaceful manner as a proper public expression of views.⁷ Moreover, the State cannot punish mere advocacy or forbid, on pain of

criminal punishment, assembly with others merely to advocate activity even if that activity is criminal in nature.⁸ A legislature acts within its constitutional discretion under provisions protecting the right to petition for redress of grievances and the right to freedom of speech when it enacts a statute prohibiting disruption of public meetings.⁹

Lobbying implicates First Amendment guarantees of petition, expression, and assembly, as well as similar rights found in state constitutions,¹⁰ and legitimate attempts to influence government action are absolutely protected from civil liability by the fundamental guarantee to petition for redress of grievances.¹¹ The clear import of the right to petition is to protect from litigation those who attempt to induce the passage, repeal, or enforcement of law or to solicit governmental action even though the result of such activities may indirectly cause injury to others.¹²

The right to petition extends to all departments of government,¹³ including the executive or legislative branches directly,¹⁴ and has been said to bar state action interfering with access to the legislature, the executive branch and its various agencies, and the judicial branch.¹⁵ However, the right to petition government afforded by the First Amendment does not include the absolute right to speak in person where written communications are considered by government officials.¹⁶ The right of petition extends to administrative agencies.¹⁷ It should be noted the right to petition does not require government policymakers to listen or respond to individuals' communications on public issues.¹⁸

Although the wording of the First Amendment specifies the right to petition is to petition the government for a redress of grievances, the right includes petitions of private actors seeking personal gain.¹⁹ However, the right to petition is personal and does not extend to petitioning activity on behalf of others.²⁰

The constitutional right to assemble cannot be used to subvert the government²¹ and does not include the practice or incitement of violence.²² The right to assemble does not encompass the right to assemble for an unlawful purpose.²³

While the right of petition is accorded a paramount and preferred place in the democratic system, the right has never been absolute.²⁴ The right of petition may be restricted by a narrowly drawn regulation designed to protect others' exercise of protected rights.²⁵ Likewise, reasonable, narrowly drawn restrictions designed to prevent abuse of the right to petition can be valid.²⁶ Furthermore, the right to petition does not provide absolute immunity to a defendant charged with libelous and damaging falsehoods,²⁷ nor does it provide a basis for affording absolute privilege from liability for defamatory statements about public officials.²⁸ The requirement, under the First Amendment right to petition, that plaintiff establish that defendant made defamatory statements with actual malice applies only to public-figure plaintiffs, not to private-figure plaintiffs.²⁹

The First Amendment protects the right of corporations to petition legislative and administrative bodies.³⁰

Noerr-Pennington doctrine.

The U.S. Supreme Court crafted the *Noerr-Pennington* doctrine, and carved out only a narrow exception for "sham" litigation, to avoid chilling the exercise of the First Amendment right to petition the government for the redress of grievances.³¹ The *Noerr-Pennington* doctrine is a broad rule of statutory construction, under which laws are construed so as to avoid burdening the constitutional right to petition.³² Under the *Noerr-Pennington* doctrine, those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct.³³ Thus, a person's act of petitioning the government is presumptively shielded from liability by the First Amendment against certain types of claims.³⁴

To overcome the presumption of *Noerr-Pennington* immunity, a defendant must establish that the plaintiff's instigation of litigation was merely a sham by showing not only that the litigation was objectively baseless but also that the defendant subjectively intended to harm the plaintiff through the abuse of a governmental process itself as opposed to harms flowing from the outcome of that process.³⁵

CUMULATIVE SUPPLEMENT

Cases:

Township residents engaged in speech and petitioning protected by the First Amendment when they protested the township's failure to protect open space in public wetlands that their neighbors were purportedly landscaping and mowing and threatened litigation against township for its failure to protect the wetlands. *U.S. Const. Amend. 1. Mirabella v. Villard*, 853 F.3d 641 (3d Cir. 2017).

A citizen's public records requests and lawsuits against the government can clearly constitute protected First Amendment activity. *U.S. Const. Amend. 1. DeMartini v. Town of Gulf Stream*, 942 F.3d 1277 (11th Cir. 2019).

Employer pled sufficient facts such that the sham exception to the *Noerr-Pennington* doctrine, which was a federal doctrine that, like the former statute governing strategic litigation against public participation, or the anti-SLAPP statute, safeguarded a party's First Amendment right to petition the government for a redress of grievances, precluded the doctrine from being a basis to dismiss employer's action against former employee's attorneys based on claim of invasion of privacy based on intrusion upon seclusion, solitude, and private affairs and other claims related to then-employee's making of a videotape of a sexual encounter between employer and employee; employer alleged that the litigation activity engaged in by the defendants was frivolous, grounded in false claims, and part of an extortion scheme. *U.S. Const. Amend. 1; Ga. Code Ann. § 9-11-11.1* (2015). *Rogers v. Dupree*, 824 S.E.2d 823 (Ga. Ct. App. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*State of Mo. v. National Organization for Women, Inc.*, 620 F.2d 1301 (8th Cir. 1980).
D.C.—*Rose v. Silver*, 394 A.2d 1368 (D.C. 1978).
Mo.—*Peters v. Board of Ed. of Reorganized School Dist. No. 5 of St. Charles County*, 506 S.W.2d 429 (Mo. 1974).
Broad scope
Although the First Amendment right to petition encompasses activities of a traditional political nature, its sweep is much broader and includes other forms of activity as well.
Colo.—*General Steel Domestic Sales, LLC v. Bacheller*, 2012 CO 68, 291 P.3d 1 (Colo. 2012), as modified, (Dec. 20, 2012).
Corporations
Individual plaintiffs, but not corporate plaintiff, were authorized to maintain suit in equity to restrain infringement of right of freedom of assembly.
U.S.—*Hague v. Committee for Indus. Organization*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
Prisoners
Like others, prisoners have constitutional right to petition government for redress of their grievances, which includes a reasonable right of access to the courts.
U.S.—*Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).
Probation

A claim that a probation condition violates a probationer's right peaceably to assemble under the First Amendment to the United States Constitution is cognizable under the court of appeal's precedent.

Cal.—*People v. Brandao*, 210 Cal. App. 4th 568, 148 Cal. Rptr. 3d 426 (6th Dist. 2012), review denied, (Jan. 3, 2013).

U.S.—*Williams v. Hathaway*, 400 F. Supp. 122 (D. Mass. 1975).

Colo.—*American Federation of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145, 160 A.L.R. 873 (1944).

U.S.—*Gorman Towers, Inc. v. Bogoslavsky*, 626 F.2d 607 (8th Cir. 1980); *McAlpine v. AAMCO Automatic Transmissions, Inc.*, 461 F. Supp. 1232 (E.D. Mich. 1978).

Wis.—*Weber v. City of Cedarburg*, 129 Wis. 2d 57, 384 N.W.2d 333 (1986).

U.S.—*Kiiskila v. Nichols*, 433 F.2d 745 (7th Cir. 1970); *Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489 (D.C. Cir. 1967); *Weiss v. Willow Tree Civic Ass'n*, 467 F. Supp. 803 (S.D. N.Y. 1979).

Disclosure of membership

Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs constitutes interference with freedom of assembly.

U.S.—*National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958).

Mass.—*Bowe v. Secretary of the Com.*, 320 Mass. 230, 69 N.E.2d 115, 167 A.L.R. 1447 (1946).

U.S.—*Gregory v. City of Chicago*, 394 U.S. 111, 89 S. Ct. 946, 22 L. Ed. 2d 134 (1969); *A Quaker Action Group v. Morton*, 516 F.2d 717 (D.C. Cir. 1975).

Tenn.—*Moore v. State*, 519 S.W.2d 604 (Tenn. Crim. App. 1974).

R.I.—*People v. Nash*, 173 Ill. 2d 423, 220 Ill. Dec. 154, 672 N.E.2d 1166 (1996).

W. Va.—*State v. Berrill*, 196 W. Va. 578, 474 S.E.2d 508, 112 Ed. Law Rep. 487 (1996).

Vt.—*Kimbell v. Hooper*, 164 Vt. 80, 665 A.2d 44 (1995).

Registered lobbyists are protected by the First Amendment right to petition

U.S.—*Autor v. Pritzker*, 740 F.3d 176 (D.C. Cir. 2014).

Okla.—*Gaylord Entertainment Co. v. Thompson*, 1998 OK 30, 958 P.2d 128 (Okla. 1998).

Okla.—*Gaylord Entertainment Co. v. Thompson*, 1998 OK 30, 958 P.2d 128 (Okla. 1998).

U.S.—*BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 122 S. Ct. 2390, 153 L. Ed. 2d 499 (2002); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972).

Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011).

Ariz.—*Ruiz v. Hull*, 191 Ariz. 441, 957 P.2d 984 (1998).

U.S.—*Stengel v. City of Columbus, Ohio*, 737 F. Supp. 1457 (S.D. Ohio 1988).

D.C.—*Companhia Brasileira Carbureto De Calcio v. Applied Indus. Materials Corp.*, 35 A.3d 1127 (D.C. 2012).

Or.—*State v. Marbet*, 32 Or. App. 67, 573 P.2d 736 (1978).

W. Va.—*State v. Thorne*, 175 W. Va. 452, 333 S.E.2d 817 (1985).

Kan.—*Ramcharan-Maharajh v. Gilliland*, 48 Kan. App. 2d 137, 286 P.3d 216 (2012).

Fla.—*Jacobson v. Southeast Personnel Leasing, Inc.*, 113 So. 3d 1042 (Fla. 1st DCA 2013).

Colo.—*In re Foster*, 253 P.3d 1244 (Colo. 2011).

N.J.—*State v. Hopson*, 109 N.J. Super. 382, 263 A.2d 205 (Law Div. 1970).

U.S.—*Coleman v. McGrath*, 343 U.S. 936, 72 S. Ct. 768, 96 L. Ed. 1344 (1952); *Harisiades v. Shaughnessy*, 342 U.S. 580, 72 S. Ct. 512, 96 L. Ed. 586 (1952).

Conn.—*State v. Bonilla*, 131 Conn. App. 388, 28 A.3d 1005 (2011).

Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011).

Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011).

Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011).

U.S.—*McDonald v. Smith*, 472 U.S. 479, 105 S. Ct. 2787, 86 L. Ed. 2d 384, 17 Fed. R. Evid. Serv. 1041 (1985).

Wash.—*Richmond v. Thompson*, 130 Wash. 2d 368, 922 P.2d 1343 (1996).

Mich.—*J & J Const. Co. v. Bricklayers and Allied Craftsmen, Local 1*, 468 Mich. 722, 664 N.W.2d 728 (2003).

U.S.—*Citizens United v. Federal Election Com'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010).

31 U.S.—*Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 188 L. Ed. 2d 816 (2014).
32 Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011).
33 U.S.—*Nunag-Tanedo v. East Baton Rouge Parish School Bd.*, 711 F.3d 1136 (9th Cir. 2013).
34 U.S.—*Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343 (Fed. Cir. 2014).
W. Va.—*Baldau v. Jonkers*, 229 W. Va. 1, 725 S.E.2d 170 (2011).

Relation to Sherman Act

(1) *Noerr-Pennington* immunity from suit for those engaged in petitioning activity does not stem solely from the First Amendment's right to petition; it is also based on a statutory interpretation of the Sherman Act.

W. Va.—*Baldau v. Jonkers*, 229 W. Va. 1, 725 S.E.2d 170 (2011).

(2) *Noerr-Pennington* doctrine provides that there is no antitrust liability under the Sherman Act for efforts to influence government which are protected by the First Amendment right to petition for redress of grievances, even if the motive behind the efforts is anticompetitive.

Cal.—*Hernandez v. Amcord, Inc.*, 215 Cal. App. 4th 659, 156 Cal. Rptr. 3d 90 (2d Dist. 2013).

As to the *Noerr-Pennington* doctrine in the context of monopolies, see C.J.S., *Monopolies* §§ 162, 163.

35 U.S.—*Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343 (Fed. Cir. 2014).

Sham exception

Under a "sham exception" to the *Noerr-Pennington* doctrine, activity ostensibly directed toward influencing governmental action does not qualify for *Noerr* immunity if it is a mere sham to cover an attempt to interfere directly with the business relationships of a competitor.

U.S.—*Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 188 L. Ed. 2d 816 (2014).

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16B C.J.S. Constitutional Law § 1137

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Constitutional Law

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1137. Scope of assembly and petition rights—Access to courts

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1435

The right of access to the courts is one aspect of the right to petition.

The right of access to the courts is one aspect of the right to petition,¹ and the constitutional right of petition encompasses the basic act of filing litigation.² Moreover, the right of access to the courts extends to the constitutional right to petition administrative tribunals.³ It follows that a party who has the opportunity to present his or her case at an administrative hearing and then appeal the decision of the administrative agency to a court is not deprived of the right to petition the government and of access to the courts.⁴

The right to petition includes a right to meaningful access to the courts,⁵ as well as the right to band together for the purpose of supporting litigation,⁶ and collective activity undertaken to obtain meaningful access to the courts has been held to be a fundamental right under the First Amendment.⁷

Baseless litigation is not immunized by the First Amendment right to petition⁸ and the First Amendment right to petition for redress by private litigation is limited, by definition, to nonfrivolous actions.⁹ Additionally, although the courts are a medium

by which citizens may exercise their First Amendment right to petition their government, the act of petitioning those courts may not serve as the means to achieve illegal ends.¹⁰

An attorney does not lack the First Amendment right to petition through pro se litigation simply because he or she is doing so in the capacity of representing him or herself.¹¹ However, the First Amendment right to petition does not permit unlicensed individuals to represent others in legal matters.¹²

Anti-SLAPP statutes.

State anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes are intended to protect its citizens from having their important First Amendment rights to free speech and to petition the government chilled by the threat of being dragged into onerous judicial proceedings by improper or abusive tort claims.¹³

Prisoners.

Prisoners have a right of access to the courts for the purpose of presenting their complaints.¹⁴ Inmates have a constitutional right of meaningful access to the courts, grounded in the Due Process Clause of the Fourteenth Amendment and the First Amendment right to petition the government for redress of grievances.¹⁵ The heart of a prisoner's right to litigate without active interference is the presentation of constitutional, civil rights, and habeas corpus claims, but by virtue of their broader right to petition the government for a redress of their grievances under the First Amendment, prisoners must also have opportunities to pursue certain other types of civil litigation.¹⁶

CUMULATIVE SUPPLEMENT

Statutes:

Uniform Public Expression Protection Act §§ 1 et seq., adopted July 15, 2020, creates a process through which Strategic Lawsuits Against Public Participation (SLAPPs) can be challenged and their merits fairly evaluated in an expedited manner. The Act protects individuals' rights to petition and speak freely on issues of public interest while, at the same time, protecting the rights of people and entities to file meritorious lawsuits for real injuries.

Cases:

If the defendant shows the claim is based on his exercise of the First Amendment right to petition, then, in order to defeat the defendant's invocation of Maine's anti-SLAPP (strategic litigation against public participation) statute, the plaintiff must produce some evidence that the defendant's petitioning activity was devoid of any reasonable factual support and caused actual injury. [U.S. Const. Amend. 1](#); [14 Me. Rev. Stat. § 556](#). [Franchini v. Investor's Business Daily, Inc.](#), 981 F.3d 1 (1st Cir. 2020).

Exclusion for defamation actions against certain foreign defendants in Connecticut's long-arm statute did not violate former employee's First Amendment right of access to courts, in his defamation action against, inter alia, his foreign former employer and its foreign publicist, since state legislature could choose to what extent its courts could exercise jurisdiction over a foreign defendant, and employee did not have any right to assert claim against foreign entity in absence of long-arm statute that provided jurisdiction over such an entity. [U.S. Const. Amend. 1](#); [Conn. Gen. Stat. Ann. § 52-59b](#). [Friedman v. Bloomberg L.P.](#), 884 F.3d 83 (2d Cir. 2017).

The petition clause of the First Amendment does not provide plaintiffs with an unlimited right to file lawsuits at any time. *U.S.C.A. Const.Amend. 1. Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34 (Ohio Ct. App. 1st Dist. Hamilton County 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Borough of Duryea, Pa. v. Guarnieri*, 131 S. Ct. 2488, 180 L. Ed. 2d 408 (2011); *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 122 S. Ct. 2390, 153 L. Ed. 2d 499 (2002); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972).
Haw.—*Lee v. United Public Workers, AFSCME, Local 646, AFL-CIO*, 125 Haw. 317, 260 P.3d 1135 (Ct. App. 2011), as corrected, (Aug. 4, 2011).
Mass.—*Town of Hanover v. New England Regional Council of Carpenters*, 467 Mass. 587, 6 N.E.3d 522 (2014).
N.M.—*Luginbuhl v. City of Gallup*, 2013-NMCA-053, 302 P.3d 751 (N.M. Ct. App. 2013).
Right to consult an attorney
U.S.—*Hawkins v. Mitchell*, 756 F.3d 983 (7th Cir. 2014).
Only one aspect
Because the First Amendment right to petition extends to all departments of the government, including the courts, the right of access to the courts is but one aspect of the right of petition.
Colo.—*General Steel Domestic Sales, LLC v. Bacheller*, 2012 CO 68, 291 P.3d 1 (Colo. 2012), as modified, (Dec. 20, 2012).
- 2 Cal.—*Navellier v. Sletten*, 29 Cal. 4th 82, 124 Cal. Rptr. 2d 530, 52 P.3d 703 (2002).
Fundamental right
The right to petition the government, including the right to file complaints in courts, is a fundamental right protected by the First Amendment of the Federal Constitution.
Me.—*Nader v. Maine Democratic Party*, 2012 ME 57, 41 A.3d 551 (Me. 2012).
Essential mechanism
Litigation is one of the essential mechanisms by which citizens can exercise their right to petition government for a redress of grievances.
Colo.—*In re Foster*, 253 P.3d 1244 (Colo. 2011).
- 3 Cal.—*California Teachers Ass'n v. State of California*, 20 Cal. 4th 327, 84 Cal. Rptr. 2d 425, 975 P.2d 622, 138 Ed. Law Rep. 1147 (1999).
- 4 Haw.—*Lee v. United Public Workers, AFSCME, Local 646, AFL-CIO*, 125 Haw. 317, 260 P.3d 1135 (Ct. App. 2011), as corrected, (Aug. 4, 2011).
- 5 U.S.—*Matter of N. C. Trading*, 586 F.2d 221 (C.C.P.A. 1978).
- 6 U.S.—*Palmer v. Feminist Women's Health Center*, 444 U.S. 924, 100 S. Ct. 262, 62 L. Ed. 2d 180 (1979); *Feminist Women's Health Center, Inc. v. Mohammad*, 586 F.2d 530 (5th Cir. 1978).
- 7 U.S.—*In re Primus*, 436 U.S. 412, 98 S. Ct. 1893, 56 L. Ed. 2d 417 (1978); *National Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963).
- 8 U.S.—*McDonald v. Smith*, 472 U.S. 479, 105 S. Ct. 2787, 86 L. Ed. 2d 384, 17 Fed. R. Evid. Serv. 1041 (1985).
Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011).
D.C.—*In re Yelverton*, 105 A.3d 413 (D.C. 2014).
Mass.—*Psy-Ed Corp. v. Klein*, 459 Mass. 697, 947 N.E.2d 520 (2011).
Disrupting the efficient operation of court system
Colo.—*In re Foster*, 253 P.3d 1244 (Colo. 2011).
Clogging court system
The general right of persons to file lawsuits, even suits against the government, does not confer the right to clog the court system and impair everyone else's right to seek justice.
Cal.—*Vargas v. City of Salinas*, 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244 (6th Dist. 2011).

- 9 Ill.—[DeLuna v. St. Elizabeth's Hosp.](#), 147 Ill. 2d 57, 167 Ill. Dec. 1009, 588 N.E.2d 1139 (1992).
Reason
Since sham litigation by definition does not involve a bona fide grievance, it does not come within the First Amendment right to petition.
U.S.—[U.S. v. Miner](#), 774 F.3d 336, 96 Fed. R. Evid. Serv. 208 (6th Cir. 2014).
- 10 U.S.—[Waugh Chapel South, LLC v. United Food and Commercial Workers Union Local 27](#), 728 F.3d 354 (4th Cir. 2013).
- 11 Colo.—[In re Foster](#), 253 P.3d 1244 (Colo. 2011).
- 12 Colo.—[In re Foster](#), 253 P.3d 1244 (Colo. 2011).
- 13 U.S.—[Royalty Network, Inc. v. Harris](#), 756 F.3d 1351 (11th Cir. 2014).
Me.—[Bradbury v. City of Eastport](#), 2013 ME 72, 72 A.3d 512 (Me. 2013).
- 14 U.S.—[Hudson v. Palmer](#), 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).
- 15 Wyo.—[Belden v. Lampert](#), 2011 WY 83, 251 P.3d 325 (Wyo. 2011).
- 16 U.S.—[Blaisdell v. Frappiea](#), 729 F.3d 1237 (9th Cir. 2013).

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16B C.J.S. Constitutional Law § 1138

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1138. Limitations and restrictions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1430 to 1438

The constitutional rights of freedom of assembly and petition are not absolute but are subject to reasonable restrictions as to the time, place, and manner of their exercise when necessary to safeguard public interests.

The constitutional rights of freedom of assembly and petition, although fundamental, are not in their nature absolute,¹ and they are subject to reasonable² restrictions as to the time, place, and manner of exercise³ when necessary to safeguard the public interest.⁴ Acts of private citizens pursuant to their right to petition are only conditionally privileged and must be considered in light of rights of others.⁵ In other words, these rights must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order and may be regulated in the interest of all.⁶

Like other personal rights secured by the constitutions, these rights are subject to the legitimate exercise of the police power of the State,⁷ and restrictions may be imposed to insure the public safety, peace, or order.⁸ The constitutional guaranties are subject to the power of the government to protect itself against unlawful conduct.⁹ The restrictions which may be placed on the rights to petition and assembly are roughly comparable to those which may be placed on the right of free speech.¹⁰ The restrictions on such rights must be content-neutral.¹¹

The right of assembly and petition are restricted to peaceful assembly and petition only,¹² and an assembly may go beyond the protection of the Constitution when violence or other action goes so far as to deprive others of the right to exercise their liberties.¹³ Where the right of freedom of assembly is abused by using assembly to incite to violence and crime, the people through their legislatures may protect themselves against that abuse.¹⁴

So, statutes proscribing inciting and engaging in a riot do not violate the constitutional right of free assembly,¹⁵ and it is no abridgment of free assembly to make criminal an assembly which has as its purpose the breach of the peace.¹⁶

The power of the State to abridge the right of assembly is the exception rather than the rule, however, and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government.¹⁷ Peaceable assembly for lawful discussion cannot be made a crime, and if the right of peaceable assembly is to be preserved, the question is not as to the auspices under which a meeting is held but as to its purpose.¹⁸

Hostile spectators or bystanders do not justify restraint of otherwise legal First Amendment activities.¹⁹ The right of assembly may not be abridged because others may find its exercise objectionable or repugnant²⁰ because persons threaten to stage a riot or because peace officers believe or are afraid that breaches of the peace will occur.²¹ Fear of serious injury cannot alone justify suppression of the right of assembly.²² However, where there is violence such as shootings, the police are not in the name of freedom of assembly powerless to prevent a breach of the peace.²³ The government may not, by taxes, licenses, punishment, or withholding of benefits, attempt to regulate assembly except within extremely narrow limits.²⁴

Persons invoking the Petition Clause must demonstrate that their First Amendment activity touched upon a matter of public concern in order to be entitled to First Amendment protection under the Petition Clause.²⁵

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Footnotes

- 1 U.S.—*American Communications Ass'n, C.I.O., v. Douds*, 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950).
Mass.—*Sahli v. Bull HN Information Systems, Inc.*, 437 Mass. 696, 774 N.E.2d 1085 (2002) (petition).
S.D.—*State v. Bad Heart Bull*, 257 N.W.2d 715 (S.D. 1977).
- 2 U.S.—*Virginia Academy of Clinical Psychologists v. Blue Shield of Virginia*, 624 F.2d 476 (4th Cir. 1980).
Fla.—*The Florida Bar v. Moses*, 380 So. 2d 412 (Fla. 1980).
La.—*State v. Douglas*, 278 So. 2d 485 (La. 1973).
- 3 U.S.—*Hunter v. Allen*, 422 F.2d 1158 (5th Cir. 1970), judgment rev'd on other grounds, 401 U.S. 989, 91 S. Ct. 1237, 28 L. Ed. 2d 528 (1971).
Cal.—*Chambers v. Municipal Court*, 65 Cal. App. 3d 904, 135 Cal. Rptr. 695 (1st Dist. 1977).
Wash.—*State v. Gossett*, 11 Wash. App. 864, 527 P.2d 91 (Div. 1 1974).
- 4 U.S.—*U.S. v. Painters Local Union No. 481*, 79 F. Supp. 516 (D. Conn. 1948), judgment rev'd on other grounds, 172 F.2d 854 (2d Cir. 1949).
Mass.—*Bowe v. Secretary of the Com.*, 320 Mass. 230, 69 N.E.2d 115, 167 A.L.R. 1447 (1946).
- 5 Ill.—*People v. DiGuida*, 152 Ill. 2d 104, 178 Ill. Dec. 80, 604 N.E.2d 336 (1992).
- 6 U.S.—*American Communications Ass'n, C.I.O., v. Douds*, 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950).
Ga.—*Daniel v. State*, 231 Ga. 270, 201 S.E.2d 393 (1973).
Keeping streets open and available for movement
N.Y.—*People v. Pesola*, 37 Misc. 3d 569, 950 N.Y.S.2d 260 (N.Y. City Crim. Ct. 2012).
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Validity of Restrictions Imposed During National Political Conventions Impinging Upon Rights to Freedom of Speech and Assembly Under First Amendment, 46 A.L.R.6th 465.

- 7 Del.—Taylor v. Municipal Court for City of Wilmington, 247 A.2d 914 (Del. Super. Ct. 1968).
N.Y.—Sullivan County v. Filippo, 64 Misc. 2d 533, 315 N.Y.S.2d 519 (Sup 1970).
Ohio—City of Cleveland v. Anderson, 13 Ohio App. 2d 83, 42 Ohio Op. 2d 202, 234 N.E.2d 304 (8th Dist. Cuyahoga County 1968).
- 8 Ga.—Sumbry v. Land, 127 Ga. App. 786, 195 S.E.2d 228 (1972).
Ill.—City of Chicago v. Weiss, 51 Ill. 2d 113, 281 N.E.2d 310 (1972).
N.J.—State v. Morgulis, 110 N.J. Super. 454, 266 A.2d 136 (App. Div. 1970).
- 9 U.S.—American Communications Ass'n, C.I.O., v. Douds, 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950).
D.C.—Arshack v. U. S., 321 A.2d 845 (D.C. 1974).
- 10 U.S.—In re Airport Car Rental Antitrust Litigation, 474 F. Supp. 1072 (N.D. Cal. 1979).
- 11 U.S.—International Soc. for Krishna Consciousness, Inc. v. City of New York, 504 F. Supp. 118 (S.D. N.Y. 1980).
Tex.—Iranian Muslim Organization v. City of San Antonio, 615 S.W.2d 202 (Tex. 1981).
- 12 U.S.—Cox v. State of La., 379 U.S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965).
N.J.—State v. Hopson, 109 N.J. Super. 382, 263 A.2d 205 (Law Div. 1970).
- 13 U.S.—Esteban v. Central Missouri State College, 415 F.2d 1077 (8th Cir. 1969).
Iowa—State v. Williams, 238 N.W.2d 302 (Iowa 1976).
N.J.—State v. Moore, 101 N.J. Super. 419, 244 A.2d 522 (App. Div. 1968).
- 14 N.H.—State v. Chaplinsky, 91 N.H. 310, 18 A.2d 754 (1941), *aff'd*, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031 (1942).
- 15 N.C.—State v. Brooks, 287 N.C. 392, 215 S.E.2d 111 (1975).
S.D.—State v. Means, 268 N.W.2d 802 (S.D. 1978).
Tex.—Faulk v. State, 608 S.W.2d 625 (Tex. Crim. App. 1980).
- 16 Fla.—State v. Simpson, 347 So. 2d 414 (Fla. 1977).
N.J.—State v. Hopson, 109 N.J. Super. 382, 263 A.2d 205 (Law Div. 1970).
- 17 U.S.—Herndon v. Lowry, 301 U.S. 242, 57 S. Ct. 732, 81 L. Ed. 1066 (1937).
N.Y.—People v. Collier, 85 Misc. 2d 529, 376 N.Y.S.2d 954 (Sup 1975).
- 18 U.S.—Thomas v. Collins, 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).
- 19 U.S.—Cox v. State of La., 379 U.S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965); Dr. Martin Luther King, Jr. Movement, Inc. v. City of Chicago, 419 F. Supp. 667 (N.D. Ill. 1976).
- 20 U.S.—Coates v. City of Cincinnati, 402 U.S. 611, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971); Collin v. Smith, 447 F. Supp. 676 (N.D. Ill. 1978), *judgment aff'd*, 578 F.2d 1197 (7th Cir. 1978).
- 21 U.S.—U. S. Servicemen's Fund v. Shands, 440 F.2d 44 (4th Cir. 1971).
Cal.—In re Brown, 9 Cal. 3d 612, 108 Cal. Rptr. 465, 510 P.2d 1017 (1973).
N.J.—Hurwitz v. Boyle, 117 N.J. Super. 196, 284 A.2d 190 (App. Div. 1971).
- 22 U.S.—U.S. v. National Treasury Employees Union, 513 U.S. 454, 115 S. Ct. 1003, 130 L. Ed. 2d 964 (1995).
- 23 U.S.—Devine v. Wood, 286 F. Supp. 102 (M.D. Ala. 1968).
- 24 Or.—Ivancie v. Thornton, 250 Or. 550, 443 P.2d 612 (1968).
- 25 U.S.—Lakner v. Lantz, 547 Fed. Appx. 13 (2d Cir. 2013); Morgan v. Covington Tp., 563 Fed. Appx. 896 (3d Cir. 2014).

Public use of property under Assembly Clause

The free speech and assembly clauses in the New Jersey Constitution can be invoked against private entities because of the public use of their property.

N.J.—Mazdabrook Commons Homeowners' Ass'n v. Khan, 210 N.J. 482, 46 A.3d 507 (2012).

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1139. Limitations and restrictions—Scope of legislative restrictions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 1430 to 1438

In order to justify laws which affect the exercise of the rights to assemble peaceably and to petition for the redress of grievances, the State must have a compelling enough interest in the subject matter to justify the abridgment, and the scope of the abridgment itself must not be greater than is reasonably necessary to serve such state interest.

Laws which affect the exercise of the rights to assemble peaceably and to petition for the redress of grievances cannot be sustained merely because they are enacted for the purpose of dealing with some evil within the State's legislative competence or even because such laws do in fact provide a helpful means of dealing with such an evil.¹ In fact, when legislation restricts such rights, it is not enough that the legislation may be rationally related to a legitimate state purpose.² Rather, a state must have a compelling enough interest in the subject matter to justify the abridgment and the scope of the abridgment itself must not be greater than is reasonably necessary to serve such state interest.³

Laws which burden fundamental First Amendment right to petition government for redress of grievances must be drawn with narrow specificity to meet purported compelling state interest.⁴ Thus, when the governmental purpose sought to be accomplished by a statute or regulation can be more narrowly achieved, it is not permissible for the State to sweep within the scope of prohibition activities that constitute constitutionally protected assembly.⁵ Nondiscriminatory regulations restricting First Amendment rights are constitutionally acceptable where alternative means for the exercise of the rights are available,⁶ and

the courts must balance the governmental interest in enforcing such restrictions against the inhibitions the restrictions impose on the rights of assembly and petition.⁷

Statutes affecting the right of assembly must observe established distinctions between mere advocacy and incitement to imminent lawless action⁸ and freedom of assembly and of petition is susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect.⁹

In other words, any attempt to restrict freedom of assembly must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger;¹⁰ only the gravest abuses, endangering paramount interests, give occasion for permissible limitation on the right of free assembly.¹¹ On the other hand, where clear and present danger is shown, freedom of assembly and petition may be restricted.¹²

A rule prohibiting overnight activities on the steps of a state capitol was assembly-neutral and, thus, was not susceptible to a facial challenge under a state constitutional provision guaranteeing the right to assembly, as the rule prohibited presence on the capitol steps but that presence was not necessarily assembly for the common good.¹³

CUMULATIVE SUPPLEMENT

Cases:

In determining whether a restriction on speech or assembly is permissible under the First Amendment, if exemptions to the restriction represent a governmental attempt to give one side of a debatable public question an advantage in expressing its views to the people, the exemptions can invalidate an otherwise content-neutral regulation. [U.S. Const. Amend. 1. Desrosiers v. Governor](#), 486 Mass. 369, 158 N.E.3d 827 (2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n](#), 389 U.S. 217, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967).
A.L.R. Library
["Choice of evils," necessity, duress, or similar defense to state or local criminal charges based on acts of public protest](#), 3 A.L.R.5th 521.
- 2 U.S.—[Blasecki v. City of Durham, N. C.](#), 456 F.2d 87 (4th Cir. 1972).
- 3 U.S.—[Blasecki v. City of Durham, N. C.](#), 456 F.2d 87 (4th Cir. 1972); [American Civil Liberties Union of New Jersey v. New Jersey Election Law Enforcement Commission](#), 509 F. Supp. 1123 (D.N.J. 1981).
Public speaking
Under the constitutional guarantees of free speech and assembly, a government entity cannot exclude speakers from a public forum without a compelling state interest.
[Ohio—Cleveland v. McCardle](#), 139 Ohio St. 3d 414, 2014-Ohio-2140, 12 N.E.3d 1169 (2014).
- 4 [Ariz.—Ruiz v. Hull](#), 191 Ariz. 441, 957 P.2d 984 (1998).
- 5 U.S.—[Citizens Energy Coalition of Indiana, Inc. v. Sendak](#), 459 F. Supp. 248 (S.D. Ind. 1978); [Soglin v. Kauffman](#), 295 F. Supp. 978 (W.D. Wis. 1968), judgment aff'd, 418 F.2d 163 (7th Cir. 1969).
- 6 U.S.—[Pell v. Procunier](#), 417 U.S. 817, 94 S. Ct. 2827, 41 L. Ed. 2d 495 (1974).

- 7 U.S.—*International Soc. for Krishna Consciousness, Inc. v. City of New York*, 504 F. Supp. 118 (S.D. N.Y. 1980).
Ill.—*City of Chicago v. Lynd*, 47 Ill. 2d 205, 265 N.E.2d 116 (1970).
- 8 U.S.—*Brandenburg v. Ohio*, 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969).
- 9 U.S.—*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943).
Okla.—*State ex rel. Dept. of Transp. v. Pile*, 1979 OK 152, 603 P.2d 337 (Okla. 1979).
- 10 U.S.—*Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).
Va.—*Owens v. Com.*, 211 Va. 633, 179 S.E.2d 477 (1971).
- 11 U.S.—*Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).
- 12 U.S.—*U.S. v. Korner*, 56 F. Supp. 242 (S.D. Cal. 1944).
Test
The "clear and present danger" test for restricting freedom of association is met when expression is directed to "inciting or producing imminent lawless action and is likely to incite or produce such action."
U.S.—*Del Corso v. Krause*, 435 U.S. 924, 98 S. Ct. 1488, 55 L. Ed. 2d 517 (1978).
- 13 Or.—*State v. Babson*, 249 Or. App. 278, 279 P.3d 222 (2012), decision *aff'd*, 355 Or. 383, 326 P.3d 559 (2014).

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16B C.J.S. Constitutional Law § 1140

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1140. Electoral regulations impacting rights of assembly and petition

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1430, 1435

Without abridging the rights of assembly or petition, the State may reasonably regulate elections.

Without abridging the right of assembly or of petition, the State may reasonably regulate elections.¹ The right to petition the government is subject to reasonable regulations which are necessary to ensure ballot integrity and valid election process.² However, particular election laws may infringe on the rights of assembly and petition,³ and state action improperly changing election law procedures denies voters their First Amendment right to petition.⁴

A statute limiting expenditures by candidates has been held unconstitutional where the public interests served by the statute are clearly outweighed by the citizens' interests protected by the freedom of assembly.⁵ Statutes which distinguish between candidates nominated by the party primary method and candidates nominated by other methods and providing different procedural requirements for establishing their candidacy are violative of the right to assemble and petition for a redress of grievances.⁶

Where a state constitution does not grant the legislature the authority to establish qualifications for public office, statutory qualifications enacted in addition to those set forth in the constitution are unconstitutional under a freedom of assembly provision of that constitution.⁷

The First Amendment prohibits affirmative interference with or abridgment of the right of assembly but does not require the State to underwrite, subsidize, or otherwise actively contribute to its exercise with regard to elections.⁸

The owners of a privately owned and operated shopping mall may prohibit private citizens from soliciting signatures for recall petition where owners enforce the policy prohibiting all solicitation and political activity in the mall, and the policy is applied uniformly.⁹

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Footnotes

- 1 U.S.—*Miller v. Kusper*, 445 F.2d 1059 (7th Cir. 1971).
Cal.—*Bilofsky v. Deukmejian*, 124 Cal. App. 3d 825, 177 Cal. Rptr. 621 (2d Dist. 1981).
Wash.—*King County Council v. Public Disclosure Commission*, 93 Wash. 2d 559, 611 P.2d 1227 (1980).
 - 2 Fla.—*Krivaneck v. Take Back Tampa Political Committee*, 625 So. 2d 840 (Fla. 1993).
 - 3 U.S.—*Toporek v. South Carolina State Election Commission*, 362 F. Supp. 613 (D.S.C. 1973); *United Citizens Party of South Carolina v. South Carolina State Election Commission*, 319 F. Supp. 784 (D.S.C. 1970).
 - 4 U.S.—*Pena v. Nelson*, 400 F. Supp. 493 (D. Ariz. 1975).
 - 5 Or.—*Deras v. Myers*, 272 Or. 47, 535 P.2d 541 (1975).
 - 6 U.S.—*Toporek v. South Carolina State Election Commission*, 362 F. Supp. 613 (D.S.C. 1973); *United Citizens Party of South Carolina v. South Carolina State Election Commission*, 319 F. Supp. 784 (D.S.C. 1970).
 - 7 W. Va.—*Marra v. Zink*, 163 W. Va. 400, 256 S.E.2d 581 (1979).
 - 8 U.S.—*Miller v. Kusper*, 445 F.2d 1059 (7th Cir. 1971).
 - 9 Ga.—*Citizens for Ethical Government, Inc. v. Gwinnett Place Associates, L.P.*, 260 Ga. 245, 392 S.E.2d 8 (1990).
- A.L.R. Library**
Validity, Under State Constitutions, of Private Shopping Center's Prohibition or Regulation of Political, Social, or Religious Expression or Activity, 52 A.L.R.5th 195.

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1141. Labor matters; freedom of assembly

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1430, 1435

Union activities are encompassed by the guaranty of freedom of assembly, and while the constitutional guaranty may not be infringed, the government does have the right to reasonably regulate labor unions in the public interest.

The right to assemble and function through labor organizations is a concomitant of the right of assembly guaranteed by constitutional provisions.¹ The guaranties of freedom of assembly and petition give workers the right to gather together for the lawful purpose of advising and helping one another in asserting their rights.² The right to discuss and inform people concerning the advantages and disadvantages of unions and joining them³ is protected as a part of free assembly.

The government may, however, reasonably regulate labor unions and their activities with a view to protecting the public interest provided it does not trespass on the domain set apart for free assembly.⁴ Accordingly, freedom of assembly is subject to reasonable regulation in the public interest when used as an economic weapon in the field of industrial relations or as a coercive technique,⁵ and the constitutional guaranty is not violated by a statutory provision denying to a labor union the privilege of being recognized as an exclusive bargaining agent unless the officers thereof have filed affidavits denying membership in, or affiliation with, the Communist party.⁶

Picketing is unlawful and may be enjoined or restricted, without violating the constitution, when accompanied by force, intimidation, or coercion⁷ or when engaged in for an unlawful purpose.⁸

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Footnotes

- 1 U.S.—[Bateman v. South Carolina State Ports Authority](#), 298 F. Supp. 999 (D.S.C. 1969).
Ariz.—[American Federation of Labor v. American Sash & Door Co.](#), 67 Ariz. 20, 189 P.2d 912 (1948), judgment *aff'd*, 335 U.S. 538, 69 S. Ct. 258, 93 L. Ed. 222, 6 A.L.R.2d 481 (1949).
- 2 U.S.—[United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n](#), 389 U.S. 217, 88 S. Ct. 353, 19 L. Ed. 2d 426 (1967); [Brotherhood of R. R. Trainmen v. Virginia ex rel. Va. State Bar](#), 377 U.S. 1, 84 S. Ct. 1113, 12 L. Ed. 2d 89, 94 Ohio L. Abs. 33, 11 A.L.R.3d 1196 (1964).
- 3 U.S.—[Thomas v. Collins](#), 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).
Cal.—[Aaron v. Municipal Court](#), 73 Cal. App. 3d 596, 140 Cal. Rptr. 849 (1st Dist. 1977).
- 4 U.S.—[Thomas v. Collins](#), 323 U.S. 516, 65 S. Ct. 315, 89 L. Ed. 430 (1945).
Tex.—[American Federation of Labor v. Mann](#), 188 S.W.2d 276 (Tex. Civ. App. Austin 1945).
- 5 Mo.—[Rogers v. Poteet](#), 355 Mo. 986, 199 S.W.2d 378 (1947).
Pa.—[Com. v. Dutch](#), 165 Pa. Super. 187, 67 A.2d 821 (1949).
- 6 U.S.—[American Communications Ass'n, C.I.O., v. Douds](#), 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950); [National Maritime Union of America v. Herzog](#), 78 F. Supp. 146 (D. D.C. 1948), judgment *aff'd*, 334 U.S. 854, 68 S. Ct. 1529, 92 L. Ed. 1776 (1948).
- 7 N.J.—[Phelps Dodge Copper Products Corp. v. United Elec., Radio & Mach. Workers of America](#), 138 N.J. Eq. 3, 46 A.2d 453 (Ch. 1946), order *aff'd*, 139 N.J. Eq. 97, 49 A.2d 896 (Ct. Err. & App. 1946).
- 8 Wyo.—[Hagen v. Culinary Workers Alliance Local No. 337](#), 70 Wyo. 165, 246 P.2d 778 (1952).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1142. Labor matters; freedom of assembly—Public employees

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1430, 1435

The First Amendment right of assembly extends to guarantee public employees the right to unionize and participate in labor union activity.

The First Amendment right of assembly guarantees to public employees the right to organize collectively and the right to select representatives to engage in collective bargaining,¹ and regulations which restrict or limit the right of public employees to join labor unions have been held unconstitutional infringements in the right of assembly.² Public employees also have the right to present petitions to their governmental employer, as well as the right to present their individual or representative views to public employers at a public meeting.³ Public employees' exercise of fundamental constitutional rights of expression, assembly, association, and petition cannot be waived by a collective bargaining agreement.⁴

A public employees' union, however, has no First Amendment right to compel a governmental employer to negotiate with it concerning labor grievances.⁵ Furthermore, a public employer does not have a constitutional obligation to respond to the union's demands or to enter into a contract with it.⁶ A public employer is not required to recognize or bargain with a public employee association or union in absence of a statutory requirement to do so.⁷ The State may deny its employees the right to strike,⁸ and may constitutionally enjoin peaceful picketing,⁹ without infringing the right of freedom of assembly.

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Footnotes

- 1 U.S.—*University of New Hampshire Chapter of Am. Ass'n of University Professors v. Haselton*, 397 F. Supp. 107 (D.N.H. 1975).
As to public officers' and employees' rights of assembly and petition, generally, see § 1143.
- 2 U.S.—*Mescall v. Rochford*, 655 F.2d 111 (7th Cir. 1981).
- 3 U.S.—*Henrico Professional Firefighters Ass'n Local 1568 v. Board of Sup'rs of Henrico County*, 649 F.2d 237 (4th Cir. 1981).
- 4 W. Va.—*Woodruff v. Board of Trustees of Cabell Huntington Hosp.*, 173 W. Va. 604, 319 S.E.2d 372 (1984).
- 5 U.S.—*Henrico Professional Firefighters Ass'n Local 1568 v. Board of Sup'rs of Henrico County*, 649 F.2d 237 (4th Cir. 1981).
- 6 U.S.—*University of New Hampshire Chapter of Am. Ass'n of University Professors v. Haselton*, 397 F. Supp. 107 (D.N.H. 1975); *Newport News Fire Fighters Ass'n Local 794, Intern. Ass'n of Fire Fighters v. City of Newport News, Va.*, 339 F. Supp. 13, 16 Fed. R. Serv. 2d 475 (E.D. Va. 1972).
- 7 W. Va.—*Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n*, 183 W. Va. 15, 393 S.E.2d 653, 61 Ed. Law Rep. 765 (1990).
- 8 La.—*City of New Orleans v. Police Ass'n of Louisiana, Teamsters Local No. 253*, 369 So. 2d 188 (La. Ct. App. 4th Cir. 1979), writ denied, 376 So. 2d 1269 (La. 1979).
R.I.—*School Committee of Town of Westerly v. Westerly Teachers Ass'n*, 111 R.I. 96, 299 A.2d 441 (1973).
- 9 N.D.—*State v. Heath*, 177 N.W.2d 751 (N.D. 1970).
Ohio—*Board of Ed. of Martins Ferry City School Dist. v. Ohio Ed. Ass'n*, 13 Ohio Misc. 308, 42 Ohio Op. 2d 383, 235 N.E.2d 538 (C.P. 1967).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1143. Rights of petition and assembly; public officers and employees

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1430, 1435

Individuals do not relinquish the rights of assembly and petition upon acceptance of public employment, and public employees have the same constitutional rights of petition and assembly as others.

An individual does not relinquish his or her rights of assembly and petition upon the acceptance of public employment,¹ and public employees enjoy the same constitutional rights of free assembly and petition as do others.² When expressive activity is directed toward a public employer by public employees, right to petition government for a redress of grievances is implicated.³ Thus, a public employee may not be discharged, removed, or denied renewal of his or her contract because of the exercise of these rights.⁴

Public employees' right to petition includes the right to petition Congress as well as the head of their own departments but does not extend outside the executive branch and the courts.⁵

The State may, nonetheless, adopt reasonable regulations and statutes with respect to public employees' and officials' rights to peaceably petition and assemble⁶ when necessary to further important governmental interests which outweigh the infringement on such rights.⁷ Where the rights are so limited, the public employees' rights as citizens must be balanced against the interest

of the State in controlling the exercise of those rights and the freedom to petition may be circumscribed to the extent necessary to achieve a valid state objective.⁸

The rights of petition and assembly are not infringed by discharges that are related solely to job performance and do not involve the exercise of constitutional rights⁹ or by discharges based on disruptive, improper, or insubordinate conduct.¹⁰ A public employee's challenge, based on the right to petition, to discipline or termination must address a matter of public concern.¹¹

The Hatch Act,¹² restricting the political activities of government officers and employees, is not unconstitutional as denying federal employees freedom of peaceable assembly.¹³

CUMULATIVE SUPPLEMENT

Cases:

On First Amendment petition claim, if a public employee petitions as an employee on a matter of purely private concern, the employee's First Amendment interest must give way, as it does in speech cases. *U.S. Const. Amend. 1. Harmon v. Dallas County, Texas*, 927 F.3d 884 (5th Cir. 2019), as revised, (July 9, 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Robbins v. Board of Ed. of Argo Community High School Dist.* 217, Cook County, Ill., 313 F. Supp. 642 (N.D. Ill. 1970).
- N.J.—*State v. Besson*, 110 N.J. Super. 528, 266 A.2d 175 (County Ct. 1970).
- 2 U.S.—*Adler v. Board of Education of City of New York*, 342 U.S. 485, 72 S. Ct. 380, 96 L. Ed. 517, 27 A.L.R.2d 472 (1952) (overruled in part on other grounds by, *Keyishian v. Board of Regents of University of State of N. Y.*, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967)).
- La.—*City of New Orleans v. Police Ass'n of Louisiana, Teamsters Local No. 253*, 369 So. 2d 188 (La. Ct. App. 4th Cir. 1979), writ denied, 376 So. 2d 1269 (La. 1979).
- As to public employees' rights of assembly and petition relating to labor matters, see § 1142.
- 3 W. Va.—*Woodruff v. Board of Trustees of Cabell Huntington Hosp.*, 173 W. Va. 604, 319 S.E.2d 372 (1984).
- 4 U.S.—*Jannetta v. Cole*, 493 F.2d 1334 (4th Cir. 1974); *Jackson v. U. S.*, 192 Ct. Cl. 765, 428 F.2d 844 (1970).
- 5 U.S.—*Swaaley v. U. S.*, 180 Ct. Cl. 1, 376 F.2d 857 (1967).
- 6 U.S.—*Swaaley v. U. S.*, 180 Ct. Cl. 1, 376 F.2d 857 (1967).
- Mich.—*Jackson County Ed. Ass'n v. Grass Lake Community Schools Bd. of Ed.*, 95 Mich. App. 635, 291 N.W.2d 53 (1979).
- 7 Ill.—*People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 46 Ill. Dec. 678, 414 N.E.2d 731 (1980).
- 8 Mich.—*Jackson County Ed. Ass'n v. Grass Lake Community Schools Bd. of Ed.*, 95 Mich. App. 635, 291 N.W.2d 53 (1979).
- 9 U.S.—*Robbins v. Board of Ed. of Argo Community High School Dist.* 217, Cook County, Ill., 313 F. Supp. 642 (N.D. Ill. 1970).
- 10 U.S.—*Rozman v. Elliott*, 335 F. Supp. 1086 (D. Neb. 1971), judgment aff'd, 467 F.2d 1145 (8th Cir. 1972).
- Ala.—*Jones v. Alabama State Tenure Commission*, 408 So. 2d 145, 2 Ed. Law Rep. 319 (Ala. Civ. App. 1981).
- 11 Miss.—*Harris v. Mississippi Valley State University*, 873 So. 2d 970, 188 Ed. Law Rep. 562 (Miss. 2004) (termination).

- 12 Wash.—[Smith v. Bates Technical College](#), 139 Wash. 2d 793, 991 P.2d 1135 (2000) (discipline).
5 U.S.C.A. §§ 7321 et seq.
- 13 U.S.—[United Federal Workers of America \(C.I.O.\) v. Mitchell](#), 56 F. Supp. 621 (D. D.C. 1944), judgment
aff'd, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754 (1947).

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16B C.J.S. Constitutional Law § 1144

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Constitutional Law

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1144. Right of assembly; regulation of public places

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1430, 1435

Without abridging the right of assembly, the government may reasonably and without discrimination regulate the use of places wholly within its control as by requiring permits for public assemblies in the streets or parks; but the requirement of a permit violates the constitution where absolute discretion to deny the permit is vested in a public official.

A dedication of property to public use in effect dedicates it to the exercise by the public of constitutional rights, including the rights of assembly and petition.¹ While the use of sidewalks and parks for public assembly and the airing of opinions is a protected use of public property under the First Amendment,² when these rights compete with other legitimate interests, the government may develop a system of restraints, on the otherwise protected conduct, to accommodate competing interests by means of balancing the First Amendment rights against the other legitimate interests to arrive at a reconciliation that protects both.³ Thus, without abridging the right of assembly, the government may reasonably regulate the use of places wholly within its control,⁴ but discriminatory regulation will not be sustained.⁵

The state interest which may supersede the constitutional right must rise far above public convenience, annoyance, or unrest.⁶ In determining whether a regulatory statute violates the First Amendment, the court must weigh the State's interest in maintaining peace and order in the street and other public places against the individual's right to freedom of assembly.⁷

The First Amendment protects from state interference the right to assemble peaceably in the interest and furtherance of the unpopular as well as the popular.⁸

Not every parcel of publicly owned property is suitable or available for the exercise of the constitutional rights of citizens to petition their government or express grievances.⁹ The place chosen by a group of people to exercise their constitutional rights to assembly and petition must be a public place or a place to which the public customarily has access.¹⁰ Within public institutions which do not perform speech-related functions, such as hospitals, jails, or military bases, the government is free to exclude even peaceful speech and assembly which interferes in any way with the functioning of these organizations.¹¹ However, unless a building is a sensitive facility that may be made totally off limits to public debate, the right to demonstrate on public property should only be regulated by statutes which control the time, place, and manner of using such property.¹²

In determining whether a public place may be placed off limits to the exercise of the right of assembly by demonstrators, the court must consider the character of the place being sought for use as a public forum, the usual activities conducted there, the nature of its essential purpose, whether a relevant audience is to be found, and whether substantial inconvenience may result from the use or abuse of that forum.¹³ When an assembly takes place on public property which is not open to the use of the public in common, its use may be restrained, and to ignore such valid restraint is unjustified.¹⁴

Statutes making it unlawful for any person to go upon or remain within a public building for the purpose of interfering with the lawful use of such building,¹⁵ or to remain in a public building after having been asked to leave,¹⁶ or to remain beyond regular business hours¹⁷ are not an encroachment on First Amendment rights and are enforceable for the protection of public buildings and for the orderly carrying out of public business.¹⁸

Since, without abridging the right of assembly, the government may regulate the use of streets or highways¹⁹ and parks,²⁰ the State or municipality may require a permit for public gatherings in the public parks²¹ or for the carrying of placards therein.²² So, the State may, in a proper manner, regulate the use of the streets by requiring a permit.²³

The requirement of a permit may, however, in certain circumstances, constitute an unwarranted interference with the right of public assemblage²⁴ as where unlimited discretion is conferred on an official to deny the permit.²⁵

An ordinance which allowed a government administrator to vary the permit fee for parading to reflect the estimated cost of maintaining public order violated the right to free speech.²⁶

School buildings.

The State need not make school buildings available for public meetings²⁷ and broad discretionary power may be exercised as to the granting of applications by organizations for the use of such buildings.²⁸ It has been held, however, that if the government elects to open the schools for such assemblies, it cannot arbitrarily prevent any members of the public from holding meetings in school buildings or make the privilege of holding them dependent on conditions that would deprive any members of the public of their constitutional rights.²⁹

Housing financed by government.

Where private landlords have been financially assisted by the government in the construction of a housing project, the actions of the landlords in respect to their tenants cannot be considered private so as to fall outside the protection of the First Amendment.³⁰

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Footnotes

- 1 U.S.—*Wolin v. Port of New York Authority*, 268 F. Supp. 855 (S.D. N.Y. 1967), judgment aff'd, 392 F.2d 83 (2d Cir. 1968).
- 2 U.S.—*A Quaker Action Group v. Morton*, 516 F.2d 717 (D.C. Cir. 1975).
N.H.—*State v. Inselburg*, 114 N.H. 824, 330 A.2d 457 (1974).
- 3 U.S.—*A Quaker Action Group v. Morton*, 516 F.2d 717 (D.C. Cir. 1975).
- 4 Fla.—*W. J. W. v. State*, 356 So. 2d 48 (Fla. 1st DCA 1978).
Wash.—*State v. Gossett*, 11 Wash. App. 864, 527 P.2d 91 (Div. 1 1974).
- 5 U.S.—*Fowler v. State of R.I.*, 345 U.S. 67, 73 S. Ct. 526, 97 L. Ed. 828 (1953).
Fla.—*W. J. W. v. State*, 356 So. 2d 48 (Fla. 1st DCA 1978).
- 6 U.S.—*Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.D.C. 1972), judgment aff'd, 409 U.S. 972, 93 S. Ct. 311, 34 L. Ed. 2d 236 (1972).
- 7 Cal.—*Dillon v. Municipal Court*, 4 Cal. 3d 860, 94 Cal. Rptr. 777, 484 P.2d 945 (1971).
- 8 U.S.—*National Socialist White People's Party v. Ringers*, 473 F.2d 1010 (4th Cir. 1973).
- 9 U.S.—*Knight v. Anderson*, 480 F.2d 8 (9th Cir. 1973).
- 10 N.Y.—*People v. Arvio*, 66 Misc. 2d 474, 321 N.Y.S.2d 382 (J. Ct. 1971).
- 11 U.S.—*U.S. v. Douglass*, 579 F.2d 545 (9th Cir. 1978).
N.Y.—*People v. Arvio*, 66 Misc. 2d 474, 321 N.Y.S.2d 382 (J. Ct. 1971).
- 12 U.S.—*Jeannette Rankin Brigade v. Chief of Capitol Police*, 342 F. Supp. 575 (D.D.C. 1972), judgment aff'd, 409 U.S. 972, 93 S. Ct. 311, 34 L. Ed. 2d 236 (1972).
Wash.—*State v. Gossett*, 11 Wash. App. 864, 527 P.2d 91 (Div. 1 1974).
- 13 Md.—*Kirstel v. State*, 13 Md. App. 482, 284 A.2d 12, 50 A.L.R.3d 328 (1971).
N.Y.—*Byrne v. Long Island State Park Commission*, 66 Misc. 2d 1070, 323 N.Y.S.2d 442 (Sup 1971).
- 14 Wash.—*State v. Gossett*, 11 Wash. App. 864, 527 P.2d 91 (Div. 1 1974).
- 15 Ind.—*Cunningham v. State*, 261 Ind. 256, 301 N.E.2d 638 (1973).
- 16 Ill.—*People v. Barnett*, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1st Dist. 1972).
Md.—*Kirstel v. State*, 13 Md. App. 482, 284 A.2d 12, 50 A.L.R.3d 328 (1971).
- 17 Cal.—*Parrish v. Municipal Court, Modesto Judicial Dist., Stanislaus County*, 258 Cal. App. 2d 497, 65 Cal. Rptr. 862 (5th Dist. 1968).
Ill.—*People v. Barnett*, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1st Dist. 1972).
- 18 Cal.—*Parrish v. Municipal Court, Modesto Judicial Dist., Stanislaus County*, 258 Cal. App. 2d 497, 65 Cal. Rptr. 862 (5th Dist. 1968).
Ill.—*People v. Barnett*, 7 Ill. App. 3d 185, 287 N.E.2d 247 (1st Dist. 1972).
- 19 Cal.—*Ex parte Bodkin*, 86 Cal. App. 2d 208, 194 P.2d 588 (1st Dist. 1948).
Mich.—*People v. Deutsch*, 19 Mich. App. 74, 172 N.W.2d 392 (1969).
- 20 U.S.—*Hague v. Committee for Industrial Organization*, 101 F.2d 774 (C.C.A. 3d Cir. 1939), decree modified on other grounds, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
- 21 U.S.—*A Quaker Action Group v. Morton*, 516 F.2d 717 (D.C. Cir. 1975).
- 22 N.Y.—*People v. Nahman*, 298 N.Y. 95, 81 N.E.2d 36 (1948).
- 23 U.S.—*Illinois Migrant Council v. Campbell Soup Co.*, 519 F.2d 391 (7th Cir. 1975).
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Validity, construction, and application of state or local enactments regulating parades, 80 A.L.R.5th 255.
- 24 U.S.—*Hague v. Committee for Indus. Organization*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423 (1939).
Cal.—*Dillon v. Municipal Court*, 4 Cal. 3d 860, 94 Cal. Rptr. 777, 484 P.2d 945 (1971).
- 25 U.S.—*Cox v. State of La.*, 379 U.S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965).
Cal.—*Aaron v. Municipal Court*, 73 Cal. App. 3d 596, 140 Cal. Rptr. 849 (1st Dist. 1977).
- 26 U.S.—*Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 112 S. Ct. 2395, 120 L. Ed. 2d 101, 75 Ed. Law Rep. 29 (1992).

- 27 U.S.—*Hunt v. Board of Ed. of Kanawha County*, 321 F. Supp. 1263 (S.D. W. Va. 1971).
- 28 Ohio—*State ex rel. Greisinger v. Grand Rapids Bd. of Ed.*, 88 Ohio App. 364, 45 Ohio Op. 170, 100 N.E.2d 294 (6th Dist. Wood County 1949).
- 29 U.S.—*National Socialist White People's Party v. Ringers*, 473 F.2d 1010 (4th Cir. 1973).
- Cal.—*Danskin v. San Diego Unified School Dist.*, 28 Cal. 2d 536, 171 P.2d 885 (1946).
- 30 U.S.—*McQueen v. Druker*, 317 F. Supp. 1122 (D. Mass. 1970), judgment *aff'd*, 438 F.2d 781 (1st Cir. 1971).

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16B C.J.S. Constitutional Law § 1145

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XII. Rights of Assembly and Petition

§ 1145. Private property open to public use; freedom of assembly and petition

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Under the Federal Constitution, private property open to public use does not lose its private character, but state constitutions may permit a restriction of private property rights in the interests of the freedom of assembly and petition.

Under the Federal Constitution, a privately owned shopping center is not required to provide access to persons exercising their constitutional right of free speech and petition when adequate alternative avenues of communication are available.¹ Such property does not lose its private character merely because the public is generally invited to use it for public purposes, and such invitation to the public does not amount to a dedication of the private property to public use so as to entitle individuals to exercise their First Amendment rights thereon.² Accordingly, the First Amendment generally is not implicated when persons engage in petitioning or other political activity inside privately owned shopping centers.³ Moreover, protestors claiming deprivation of First Amendment rights to assemble and to petition the government must show that the private property is devoted to public use and that the direct recipients of the protestors' message is the government.⁴

The Supreme Court has stated, however, that the states may exercise their police power or sovereign right to adopt in their own constitutions individual liberties more expansive than those conferred by the Federal Constitution.⁵ Accordingly, particular state constitutions have been interpreted as protecting the rights of petition and assembly when reasonably exercised on private

property which is open to the public,⁶ and the State may, in certain circumstances, reasonably restrict the right to possess and use property in the interests of freedom of assembly and petition.⁷

It has also been held that state constitutional provisions which guarantee the rights of assembly and petition do not prohibit the owners of large private malls from denying or restricting access to private individuals seeking to exercise those rights.⁸

The requirement that such private property owners permit the exercise of expressional rights on their property does not unconstitutionally infringe on the owners' property rights or unreasonably impair the value or use of their property.⁹ Whether, in a given case, owners of private property may be required to permit the reasonable exercise of free assembly on their property involves a consideration of the nature, purposes, and primary use of such property, the extent and nature of the public's invitation to use such property, and the purpose of the expressional activity undertaken on the property in relation to both the public and private use of the property.¹⁰ In determining whether the First Amendment protects petitioning or other political activity on private property, the test is not whether that property amounts to the "functional equivalent" of a public forum, rather, a court must determine whether, under the facts of the particular case, it could be said that state action implicating the First Amendment has occurred.¹¹

Even when the owner of private property is constitutionally obligated to honor the assembly rights of others, the owner is entitled to fashion reasonable rules to control the mode, opportunity, and site for the exercise of such rights on the property,¹² but such rules may not be based on the content of the expression sought to be exercised or on an undifferentiated fear or apprehension of disturbance.¹³ The content of such regulations controlling the right to engage in expressional activities may be molded by the availability of alternative means of exercising the constitutionally protected freedom.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

The Constitution does not disable private property owners and private lessees from exercising editorial discretion over speech and speakers on their property. [U.S. Const. Amend. 1. *Manhattan Community Access Corporation v. Halleck*, 139 S. Ct. 1921 \(2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Lloyd Corp., Limited v. Tanner*, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972).
- 2 U.S.—*Lloyd Corp., Limited v. Tanner*, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972).
- 3 Or.—*Stranahan v. Fred Meyer, Inc.*, 331 Or. 38, 11 P.3d 228 (2000).
- 4 Or.—*Huffman and Wright Logging Co. v. Wade*, 317 Or. 445, 857 P.2d 101 (1993).
- 5 U.S.—*PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980).
- 6 U.S.—*PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980).
Or.—*Stranahan v. Fred Meyer, Inc.*, 331 Or. 38, 11 P.3d 228 (2000).
Pa.—*Com. v. Tate*, 495 Pa. 158, 432 A.2d 1382 (1981).
- 7 U.S.—*PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980).
N.J.—*State v. Schmid*, 84 N.J. 535, 423 A.2d 615 (1980).
Pa.—*Com. v. Tate*, 495 Pa. 158, 432 A.2d 1382 (1981).

- 8 Mich.—*Woodland v. Michigan Citizens Lobby*, 423 Mich. 188, 378 N.W.2d 337 (1985).
- 9 U.S.—*PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980).
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- 11 Or.—*Stranahan v. Fred Meyer, Inc.*, 331 Or. 38, 11 P.3d 228 (2000).
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- 13 Pa.—*Com. v. Tate*, 495 Pa. 158, 432 A.2d 1382 (1981).
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